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Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of:	)	
	)	
DETERMINATION OF RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (*Phonorecords IV*)	)	**Docket No. 21-CRB-0001-PR (2023 – 2027)**
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	)	
	)	

JOINT SUBMISSION REGARDING REDACTION OF APRIL 26, 2022 ORDER ON COPYRIGHT OWNERS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INFORMATION FROM SERVICES CONCERNING THEIR RATE PROPOSALS

The National Music Publishers' Association, the Nashville Songwriters Association International (together, the "Copyright Owners") on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC, and Spotify USA Inc. (together, the "Services") on the other hand, each a Participant in the *Phonorecords IV* proceeding, make this joint submission regarding redaction of the Judges' April 26, 2022 Order on Copyright Owners' Motion to Compel Production of Documents and Information from Services Concerning Their Rate Proposals ("Order").

Pursuant to the Order, the Copyright Owners and the Services conferred to identify confidential material contained in the Order, which they request be redacted from the public version. The agreed redacted version for public view is attached hereto as Exhibit A.

Dated: May 10, 2022

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Exhibit A

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re	
DETERMINATION OF ROYALTY RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (Phonorecords IV)	**Docket No. 21-CRB-0001-PR (2023-2027)**

PUBLIC ORDER ON COPYRIGHT OWNERS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INFORMATION FROM SERVICES CONCERNING THEIR RATE PROPOSALS[1]

In this Motion, Copyright Owners[2] ask the Copyright Royalty Judges (Judges) to compel the Services[3] to produce certain documents and information related to the rates and terms that each Service proposed (Rate Proposals) as part of its written direct statement (WDS). Motion at 1. Copyright Owners requested these documents and information in Requests for Production of Documents (RFPs) and Interrogatories that were identified in Appendix A to the Declaration of Lauren Cooperman. Copyright Owners contend that the requested documents and information are directly related to components of each Service's Rate Proposal and the impact those components would have on the payable mechanical royalty pool. *Id.*

Copyright Owners contend that the rate proposal of each Service seeks, through proposed changes to definitions and other terms, to reduce payable mechanical royalties. Copyright Owners aver that the information they seek is necessary to show the impact of the Services' proposed terms. *Id.* at 2. For example, Copyright Owners state that the Services have proposed deductions from Service Provider Revenue that include taxes, refunds, chargebacks, carriage and in-app commission fees. *Id.* Yet, according to Copyright Owners, many Services have refused to produce documents showing the "historical quantum" that would be deducted under their proposals. *Id.* at 2-3. Copyright Owners also state that the Services' Rate Proposals permit them to allocate some Service Provider Revenue to other products or content (*e.g.*, podcasts or videos) without categorizing the offering as a bundled offering, or else to exclude revenues that the Services deem related to such content even if the content is available side-by-side on the same offering. *Id.* at 3. Copyright Owners contend that this approach is new and they are entitled to data showing the impact such approach would have on mechanical royalties if it were adopted. *Id.*

[1] The disputed aspects of the RFPs and Interrogatories are set forth in Appendix A of the Motion.

[2] In this proceeding, the Copyright Owners are represented, in the main, by the National Music Publishers' Association and the Nashville Songwriters Association International.

[3] The music streaming services (Services) comprise Amazon.com Services LLC; Apple Inc.; Google LLC; Pandora Media, LLC; and Spotify USA Inc.

Copyright Owners also assert that the Services' Rate Proposals give the latter discretion as to what revenues are included in Service Provider Revenue and what amounts can be deducted and permits them to calculate revenues and royalties in "opaque and inscrutable ways." *Id.* Copyright Owners believe they are entitled to documents and information "elucidating the [Services'] otherwise impenetrable Rate Proposals" to help Copyright Owners understand, test and challenge those proposals. *Id.*

Copyright Owners divide their document requests and interrogatories into five categories:

(1) documents and information concerning the payable royalty pool (Motion at 5-6) (in which Copyright Owners seek information that purportedly will show the impact of the Services' rate proposals on the payable royalty pool under 37 C.F.R. § 385.21(b));

(2) documents and information concerning Service Provider Revenue (*i.e.*, revenue calculations, revenue allocations, revenue deductions) (Motion at 6-13) (Copyright Owners state that each Service's rate proposal (other than Amazon's proposal for Prime Music) is based on a percentage-of-revenue calculation and, thus, service revenue is essential in calculating the payable royalty pool. Motion at 7) (Copyright Owners also contend that Spotify has proposed changing the definition of "Service Provider Revenue" to require that revenue be directly derived from an offering and exclude any revenue derived by the Service Provider solely in connection with Non-Covered works; Copyright Owners state that they requested documents about these aspects of Spotify's proposal (Spotify RFP 3, 4, 33[4]), but Spotify refused to produce them (Motion at 9-10);

(3) documents and information concerning TCC (Motion at 13-14) (Copyright Owners state that rate proposals from Google, Pandora, and Spotify include a TCC component for certain offerings. Copyright Owners contend that by advocating for a revenue prong that is based in part on a percentage-of-label payments, each Service has put at issue all consideration that it has provided to labels. Motion at 13);

(4) documents and information concerning promotional offerings (Motion at 14-15) (Copyright Owners state that the Services' rate proposals all propose reduced or zero mechanical royalties for promotional offerings. Motion at 14); and

(5) documents and information concerning other calculations that impact payable royalties (Motion at 15). (Copyright Owners state that each Service's rate proposal requires the subtraction of public performance royalties from an all-in royalty calculation, the use of subscriber counts to calculate per-subscriber royalty prongs, and the use of play counts to prorate the royalties for each musical work used. Motion at 15).

In light of these aspects of the Services' rate proposals, Copyright Owners request that the Judges compel production with respect to:

[4] With respect to RFP 33, Copyright Owners represent that Spotify unilaterally limited what it has agreed to produce to documents concerning its podcast-related revenue and non-royalty-bearing, music-related revenue. Motion at 10 n.11.

Interrogatories: 1, 5, 6, 8[5], 12, and 13, and

Amazon RFPs 3(a), (c), (d), and (e); 46; 244, 245, 246, 269, and 270;

Apple RFPs 115[6], 123, 143, and 144;

Google RFPs 10, 88, 109, 114, 116, 117, 137, and 138;

Pandora RFPs 5, 113, 114, 115, and 116; and

Spotify RFPs 3(b), 3(d), 3(e), 3(f), 3(g), 3(k), 3(l), 3(m), 4, 5, 33, 34, 173, 174, 175, and 176.

Copyright Owners contend that these interrogatories and RFPs are directly related to the Services' rate proposals and are therefore discoverable and the Services have articulated no burden that justifies their refusal to produce the requested information. Motion at 2. Copyright Owners note that the standard for interrogatories is even broader than that for documents, entitling a participant to obtain nonprivileged information regarding any matter that is relevant to the claim or defense of any party. *Id.* at 4, citing 37 C.F.R. § 351.5(b)(2). Each Service filed a separate opposition to the Motion.

I. RFPs 244, 245, and 246 and Interrogatory No. 6 (Differences Between MLC and Licensor Reporting)

A. Amazon's Opposition

Amazon asserts that it has already produced a "staggering amount" of information responsive to the requests at issue. Amazon Opposition at 1. It contends that for nearly all of the requests it has either responded fully or confirmed that it maintains no responsive documents. *Id.* Amazon asserts that the remaining requests are irrelevant and "untethered" to Amazon's WDS and that compelling Amazon to produce additional information would yield nothing useful. *Id.* Amazon contends that it has already conducted reasonable searches that have yielded documents and information responsive to most of the requests that are directed to Amazon. Amazon believes that the production it has made gives the Copyright Owners the information they claim to want in response to RFPs 244, 245, 246, 269, and 270 and Interrogatories 1, 5, and 6. *Id.* at 5.

Amazon states that RFPs 244, 245, and 246 ask for documents sufficient to show each distinct revenue, subscriber, and play total that Amazon reported to the MLC or any sound recording or musical work licensor in any respective period for any product or service that includes any of Amazon's Eligible Digital Music Services. *Id.* Interrogatory No. 6 asks Amazon to identify and explain each instance in which it reported to any licensor different revenues in

[5] Copyright Owners state that neither Apple nor Google provided any response to Interrogatory 8 and Spotify and Pandora provided only partial responses, which excluded any estimated or adjusted amounts. Motion at 6.

[6] Copyright Owners acknowledge that its Motion referred to Apple FRP 119, but intended the reference to be to Apple RFP 115. CO Reply at n.3.

connection with any Eligible Digital Music Service than the revenues that Amazon reported for the Eligible Digital Music Service for the respective periods in connection with the payable royalty pool under 37 C.F.R. Part 385. *Id.* Amazon represents that it provided "a substantial amount of information" responsive to these requests, including [redacted] *Id.* at 6. Amazon contends that these documents give Copyright Owners the information the Motion seeks to compel. *Id.* According to Amazon, Copyright Owners claim to seek to show how revenues for Amazon's offerings have been reported to musical work and sound recording licensors and the MLC. Amazon contends that [redacted] *Id.*

Amazon contends that its royalty calculations are all governed either by 37 CFR § 385.2 or by the terms of a licensing agreement, whichever applies to the licensor. *Id.* at 6-7. According to Amazon, the two would only differ when a private contract adopts definitions that differ from the regulatory regime. *Id.* at 7. Amazon asserts that Copyright Owners can discern any differences from the existing discovery record and they therefore have everything they need to identify and understand every instance in which Amazon would report revenues, subscribers, or plays to a licensor that differ from those reported to the MLC. *Id.* Amazon acknowledges that Copyright Owners have stated that [redacted] because [redacted] but have never articulated [redacted] that they need discovery to address. *Id.* at n.5. From Amazon's perspective, additional searches would yield nothing useful. *Id.* Amazon contends that play counts are at best marginally relevant and not directly related to Amazon's submission. *Id.* Amazon notes that Copyright Owners can point to [redacted] as evidence of [redacted] that willing buyers and sellers would adopt and additional searches would add nothing and would be "massively" burdensome. *Id.* Amazon contends that Copyright Owners could search their own files to collect the revenue and usage reports they are demanding or could obtain the information from their affiliates (*i.e.*, major sound-recording licensors). *Id.* at 8.

B. Copyright Owners' Reply

Copyright Owners assert that Amazon [redacted] but refused to provide information regarding the revenue reported to musical work or sound recording licensors. CO Reply, Tab C at 4. According to Copyright Owners, despite Amazon's suggestion that Copyright Owners can use information from license agreements to achieve their goal, license agreements do not reflect the quantum of revenue reported to the licensors. Copyright Owners contend that the requested information in RFP 244 and Interrogatory 6 is directly related to Amazon's rate proposal. *Id.* According to Copyright Owners, the way in which each Service calculates Service Provider Revenue is a key issue and if [redacted], the difference may be due to different revenue definitions or to allocations and deductions, such as those sought by Amazon's rate proposal. *Id.* at 4-5. Regarding RFPs 245 and 246, Copyright Owners seek to compare [redacted]

Copyright Owners assert that Amazon [redacted] but refused to provide such information for other licensors. *Id.* at 5. Copyright Owners contend that the requested information is directly related to Amazon's rate proposal, which requires the use of subscriber counts to calculate per-subscriber royalty prongs, the use of plays to prorate royalties for each musical work used, and a per-play rate for Prime Music. *Id.*[7] Copyright Owners believe that the requested documents will enable them and the Judges to fairly evaluate the financial impact of Amazon's rate proposal. *Id.* at 6.

C. Ruling

The Judges **DENY** the Copyright Owners' Motion to the extent it seeks documents and/or information relating to the "impact" or "quantum" of the proposed revenue terms or the terms relating to deductions from revenue. These effects are separate and apart from the appropriateness, *vel non*, of these categories of deductions. If these rates were being set pursuant to the now-superseded statutory rate standard in 17 U.S.C. § 801(b)(1), the "impact" or "quantum" of the deductions arguably might be relevant under Factor B therein (stating a fairness objective) and/or Factor D therein (stating a disruption-avoidance standard). However, the new standard created by the Music Modernization Act, set forth in 17 U.S.C. § 115(c)(1)(F), provides that the rates shall "represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller."[8] *Id.* Copyright Owners have not made a sufficient showing that the "impact" or "quantum" of these revenue and deductions terms bear on the appropriateness of these terms under this willing buyer-willing seller marketplace standard.

Amazon acknowledges that it has provided at least some of the documents and information requested under RFPs 244, 245, 246, and Interrogatory 6 but contends that its production is sufficient and that certain of the requested information is only marginally relevant or the Copyright Owners can make do with the information they have already received to achieve their goal, as Amazon perceives it to be. Copyright Owners argue persuasively that each of the requests is directly related and relevant to Amazon's rate proposal. The Judges, therefore, **GRANT** the Copyright Owners' Motion to compel with respect to these requests. Amazon shall produce all responsive documents and information requested in RFPs 244, 245, and 246 and Interrogatory 6 or state affirmatively that it has already done so.

II. Interrogatory 5 (Revenue Calculation Methodology)

A. Amazon's Opposition

According to Amazon, Interrogatory 5 requests information for how it calculates Revenues for each of its Offerings (including data repositories queried, queries and code used in the data gathering and Revenue calculation process, data points gathered, processes for inserting

[7] Copyright Owners contend that they cannot obtain revenue, subscriber and play counts from their affiliates because they are not affiliated with all publishers. CO Reply, Tab C at n.8.

[8] *See generally* Google Opposition at 2 (A rate proposal does not turn on the impact or magnitude of any particular rate prong or term but rather proposes that the Section 115 regulations be updated to reflect [redacted]).

estimates, modifications, adjustments or allocations, identity of persons/roles that are responsible for the data gathering, calculations and approval of Revenue calculations). Amazon Opposition at 8-9. Amazon represents that it has already responded to every relevant part of this interrogatory. *Id.* at 9. Amazon states that it fully explained the inputs and methods it uses to calculate revenues from each of its streaming services. *Id.* Amazon believes that that information is sufficient to satisfy Copyright Owners' stated purpose for the interrogatory, to test and challenge how Amazon has calculated its revenue to musical work licensors and whether such methods of calculation and reporting are appropriate or flawed. *Id.*

Amazon asserts that the Motion identifies nothing specifically omitted from Amazon's existing response that is plausibly necessary to achieve Copyright Owners' stated goal. *Id.* Amazon believes that Copyright Owners' demand for additional information is improper because forcing Amazon to produce underlying programming queries or the names of employees performing them would yield information that has no bearing on the mechanical-royalty rates that should apply for 2023-2027. *Id.* Amazon accuses Copyright Owners of trying to use discovery to do an end-run around statutory provisions that govern the accuracy of Amazon's royalty payments. *Id.* Moreover, Amazon contends that its historical royalty payments are irrelevant because any past error the requested discovery might show is properly addressed through reporting adjustments and would not be for the Judges to adjust the forward-looking rates at issue in this proceeding. *Id.* at 9-10. Moreover, Amazon believes producing the additional information would be burdensome. *Id.* at 10.

B. Copyright Owners' Reply

Copyright Owners contend that the information that Amazon has provided "exists in a vacuum without information regarding what Amazon deducts or excludes from gross revenue, how it makes allocations, and what it adjusts." CO Reply at 9.

C. Ruling

Amazon does not dispute that the requested information is relevant and has already provided some information that it believes to be responsive. Moreover, Amazon does not make a persuasive argument that producing any additional responsive information that it may have would be unduly burdensome. Therefore, the Judges **GRANT** Copyright Owners' request regarding Interrogatory 5 to the extent that Amazon still has responsive information that it has not yet provided. In the alternative, Amazon shall state affirmatively that it has provided all responsive information.

III. RFPs 269 and 270 (Promotional Offerings)

A. Amazon's Opposition

These requests seek all documents concerning promotional offerings that Amazon is purportedly required to retain pursuant to 37 CFR § 385.4 and 37 CFR Part 385 (2017). *Id.* Amazon represents that it has produced a document identifying each of its promotional offerings and the number of monthly subscribers for each and [redacted]

[redacted] *Id.* Amazon contends that nothing more is needed for Copyright Owners to achieve their stated purpose of testing the impact that reduced or zero mechanical royalties for promotional offerings would have on mechanical royalties. *Id.* at 10-11. Amazon believes that additional responsive information would not be directly related to Amazon's WDS and is therefore not discoverable. *Id.* at 11. Amazon points to information that Copyright Owners have requested (*i.e.*, number of plays, sound recordings involved, and other business metrics Amazon tracks in connection with each promotional offering) and notes that such data has little to do with Amazon's submission. *Id.*

Amazon notes that Copyright Owners fail to explain how the identity of the tracks that customers play while accessing a promotional offering is directly related to any part of Amazon's WDS and the same is true for the remaining components of the requests. *Id.* Amazon also asserts that Copyright Owners' requests are improper because their counsel also represents the MLC, which has invoked the MLC's records-of-use regulations quarterly to demand from Amazon the same documents for purposes of a backwards-looking audit of Amazon's payments. *Id.* at 11-12. Amazon contends that the MLC's regulations do not require production of documents, only reasonable access to records to spot-check royalty reporting. *Id.* at 12. Hence, Amazon asserts that the Judges should not allow Copyright Owners to circumvent the barriers to the MLC's overreaching demands for documents by allowing the MLC's counsel to request the same documents here. *Id.* Amazon also contends that these requests are overbroad and it should not be required to produce anything more. *Id.*

B. Copyright Owners' Reply

Copyright Owners state that these RFPs seek information regarding the financial impact of Amazon's proposal for reduced or zero mechanical royalties for promotional offerings. CO Reply, Tab C at 6. Copyright Owners dispute Amazon's claim that a document it produced in response to other RFPs provides a reasonable response to these RFPs. According to Copyright Owners, the financial impact of Amazon's proposed royalty-free promotional offerings on mechanical royalties is directly related to its rate proposal. *Id.* Copyright Owners also contend there is no basis for Amazon's suggestion that Copyright Owners' counsel could share "restricted" information with the NMPA, publishers, or the MLC.

C. Ruling

The requested information Amazon tracks as part of a promotional offering not otherwise directly related to Amazon's rate proposal, under which Amazon would pay reduced or zero mechanical royalties for promotional offerings is discoverable, *except* the identification of individual tracks streamed. It is not unreasonable for Copyright Owners to be given access to information regarding those promotional offerings, which Amazon is already required to maintain. Amazon's arguments about the alleged actions of the MLC's counsel outside the context of this proceeding are irrelevant to whether Copyright Owners requests are consistent with the CRB standard for discoverability. Therefore, the Judges **GRANT** Copyright Owners' request to compel production of documents in RFP 269 and 270, *except* the identification of individual tracks streamed, to the extent that all responsive documents have not already been produced.

However, the Judges **DENY** the requests to the extent they seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

IV. Interrogatory 1 (Historical Royalty Re-calculation); RFP 3 (Historical Recalculation of Service Revenue)

A. Amazon's Opposition

According to Amazon, Interrogatory 1 asks it to re-calculate its historical mechanical royalties for each month using the rates, terms and definitions of Amazon's rate proposal as if such rates, terms and definitions had been in effect during the applicable month. *Id.* Amazon asserts that it has provided the calculations sought. *Id.* Amazon acknowledges that its response [redacted] *Id.* at 13. Amazon contends that Copyright Owners' apparent lack of satisfaction with that limitation lacks merit. For example, Amazon proposes a new approach to allocating revenue from bundled subscription offerings, which would be a redefined term. Amazon asserts that [redacted] *Id.* Amazon also contends that to the extent it possesses relevant and readily available information, it separately provided it in response to Interrogatory 13. *Id.* Therefore, Amazon believes that Copyright Owners have enough information to assess the anticipated effects of Amazon's proposal. *Id.* at 14.

According to Amazon, RFP 3 requests documents sufficient to show various hypothetical metrics, including service revenue under the terms and definitions of Amazon's rate proposal. Amazon represents that it does not have documents responsive to RFP 3 other than the one it created in response to Interrogatory 1. *Id.* Amazon asserts that it should not be required to create documents in response to a document request. *Id.*

B. Copyright Owners' Response

According to Copyright Owners, Amazon does not argue that RFP 3 is not directly related to its WDS but only that it does not maintain responsive documents in the ordinary course of business and that it should not be required to create new documents to respond to the discovery request. CO Reply, Tab C at 7. Copyright Owners, however, state that they would accept Amazon's data from which they could perform calculations. *Id.* With respect to Interrogatory 1, Copyright Owners contend that Amazon makes two contradictory arguments, at first claiming that it has provided the calculations sought [redacted] *Id.* Copyright Owners contend that Amazon does not dispute that RFP 3 is relevant and directly related to its WDS, but instead claims that it would be impractical and burdensome to provide the requested information. *Id.*

Copyright Owners contend that none of Amazon's assertions of burden are credible. *See id.* at 2-4 ("Amazon's overarching objection is that production would be unduly burdensome, based on [redacted] But virtually all of the information sought can be found in Amazon data."). Copyright Owners question Amazon's claim that [redacted] *Id.* at 7. Nevertheless, Copyright Owners contend that even if Amazon did not create a document that does not mean that it did not run analyses and simulations that are accessible. *Id.* at 8.

C. Ruling

Amazon does not dispute the relevancy of RFP 3 and Interrogatory 1 or that the information and documents Copyright Owners seek are relevant and directly related to Amazon's rate proposal. The Judges, therefore, **GRANT** Copyright Owners' motion. Amazon shall provide the information and documents requested in Interrogatory 1 and RFP 3 to the extent Amazon produces or maintains responsive documents in the ordinary course of its business. If Amazon does not create or maintain documents or other records in a form directly responsive to the RFP, it shall provide any analyses and simulations that are accessible and/or the data from which Copyright Owners could perform their own calculations. In the alternative, Amazon shall provide an affirmative statement that it has already provided all responsive documents and information.

V. RFP 46 (App Store and Device Revenues)

A. Amazon's Opposition

According to Amazon, RFP 46 seeks information on revenues received through app stores and devices. *Id.* at 15. Amazon states that it does not operate an app store and no responsive documents exist within Amazon Music. *Id.* Amazon asserts that if Copyright Owners seek documents beyond Amazon Music, their request is not directly related to Amazon's WDS and is therefore improper. *Id.* Amazon asserts that its witness testimony makes no mention of any app store. From Amazon's perspective, the sole hook for Copyright Owners' motion is Amazon's rate proposal, which proposes a revenue deduction for amounts charged by or payable to app stores in connection with a subscription offering or mixed service bundle. *Id.* Amazon states that it has already produced extensive information about the fees it has paid and RFP 46's request for additional documents about the revenues generated by a separate Amazon app store, which is not part of Amazon's rate proposal and not bundled with Amazon's music offerings, has nothing to do with Amazon's proposal to deduct app store fees from its service revenue. *Id.* Amazon contends that Copyright Owners already have the means to measure the magnitude and impact of the proposed app store deductions, which Amazon provided in response to Interrogatory 13. *Id.* at 15-16. Amazon believes that the additional data sought by RFP 46 would contribute nothing to the exercise Copyright Owners say they want to perform. *Id.* at 16.

B. Copyright Owners' Reply

Copyright Owners contend that Amazon Music is not a standalone business but is inextricably intertwined with Amazon's other businesses [redacted] CO Reply at 8. Copyright Owners assert that Amazon earns revenue from other digital service providers (DSPs) through its app store from the distribution of music subject to the compulsory license and has made such revenue relevant by proposing a deduction of it from the payable Service Provider Revenue pool. *Id.* According to Copyright Owners, Amazon claims that its production regarding fees that it has paid to other DSP app stores is sufficient to assess the magnitude and impact of app store deductions, but the app store fee deduction Amazon seeks would enable all service providers to shift the costs of app store fees to Copyright Owners even though each service that generates app fees pockets income. *Id.* Copyright Owners argue that they are not limited to information about app store fees paid but are also entitled to information about app store fees received from all DSPs. *Id.*

In their Motion, Copyright Owners contend that Amazon has agreed to provide the amount of app store fees Amazon pays but not the amount Amazon is paid, which, in Copyright Owners' view, reveals "only part of the complete picture" and the lack of merit to any relevance objection. *See* Motion at 12. According to Copyright Owners, if Amazon's rate proposal is adopted all DSPs would be able to reduce their service provider revenue based on what they paid to Amazon for in-app commission fees. *Id.* According to Copyright Owners, there is no way to measure the magnitude and impact of the proposed app store deductions other than to see what those app store commissions are and those Services, which dominate the app store market, are the only entities with that information. *Id.*

C. Ruling

RFP 46 requests documents sufficient to show all revenues that Amazon receives from DSPs in connection with the distribution of their services through its app store or through any device, broken down at every level of specificity at which it is maintained by Amazon. By Copyright Owners' own admission, the request is not limited to fees that DSPs pay that are related to Amazon's Music business, and the request is also not limited to devices that Amazon produces or sells. Copyright Owners have a legitimate concern regarding their inability to determine what DSP related expenses Amazon might or might not attempt to deduct from music streaming revenue. Therefore, the Judges GRANT the motion to compel with respect to RFP 46.

VI. Interrogatory 13 (tax-related information)

A. Amazon's Opposition

According to Amazon, Interrogatory 13 asks it to identify the total funds it recognized that fall under each of Amazon's revenue deduction categories under the terms and definitions of Amazon's rate proposal. *Id.* Amazon states that it has provided an in-depth response to this interrogatory about virtually every deduction it proposes. Amazon asserts that the parties' sole dispute is narrow: whether Amazon should also be required to provide information for tax-

related deductions. *Id.* Amazon believes that it should not. Amazon states that [redacted] Amazon states that it has now amended its interrogatory response to make that clear. *Id.* Amazon believes that Copyright Owners do not need to quantify Amazon's taxes because [redacted]; they are not [redacted] part of Amazon's streaming service revenue. *Id.* Amazon also contends that the burden of producing sales-tax-related information would be significant, requiring a [redacted] *Id.* at 16-17.

B. Copyright Owners' Reply

According to Copyright Owners, Amazon's rate proposal includes a specific deduction for taxes from service provider revenue. CO Reply at 9. Copyright Owners assert that Amazon admits that it [redacted], that Amazon [redacted], and that its rate proposal deducts taxes it does not pay from Service Provider Revenue. *Id.*

C. Ruling

Under Rule 351.5(b)(2) a party in a royalty rate proceeding may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. Amazon does not dispute that the information Copyright Owners seek in Interrogatory 13 is relevant and in fact admits that it has provided most of the information requested. Amazon also admits that the tax information it seeks to withhold is relevant to its rate proposal. The way in which Amazon may or may not use the taxes [redacted] is pertinent to the relevancy of the information. Therefore, the Judges **GRANT** Copyright Owners' request regarding Interrogatory No. 13.

VII. Apple's General Response

Apple accuses Copyright Owners of treating discovery as an opportunity to audit the services' past royalty payments rather than focusing on documents and information directly related to Apple's WDS or relevant to assessing what future rates and terms should be. Apple Opposition at 1. Apple contends that Copyright Owners do not cite any testimony or exhibits in Apple's WDS to support their position. *Id.* at 2.

VIII. Apple RFP 115[9] and Interrogatory 6

A. Apple's Opposition

According to Apple, RFP 115 seeks documents regarding every revenue total that Apple reported to record labels, performance rights organizations, publishers, and any other licensor of musical works or sound recordings for the use of their copyrighted works in connection with

[9] Apple contends that Copyright Owners erroneously refer to this request as RFP 119, but, according to Apple, the text matches RFP 115. Apple Opposition at n.3. Copyright Owners acknowledge this error. CO Reply at n.3.

streaming on Apple Music over the past five years. Apple Opposition at 6. Apple states that Interrogatory 6 asks it to compare and identify every instance in which it reported revenue to one of these licensors that differed from the revenue it reported under the statutory mechanical license. *Id.* Apple contends that these requests are not relevant, reasonably calculated to lead to the discovery of admissible evidence or directly related to Apple's WDS. *Id.* In Apple's view, comparing revenue reported under the statutory scheme to revenue reported under different licenses, with their own rates and terms, often for rights other than the mechanical right, says nothing about the revenue calculation in Apple's rate proposal. Apple asserts that even if the revenue reported to one licensor differed from that reported to the MLC that would say nothing about how Apple plans to report future revenues under its rate proposal. *Id.* Apple contends that Copyright Owners do not cite a statement in Apple's WDS to support their motion or establish the required nexus between the requested discovery and Apple's WDS, nor do they point to an Apple license that uses the same revenue definition as Apple proposes. *Id.* Apple also asserts that the requests are burdensome. *Id.* at 7.

B. Copyright Owners' Reply

Copyright Owners dispute Apple's contention that the historical information sought in these requests is irrelevant to how Apple plans to report future revenues under its rate proposal. CO Reply, Tab B at 2. Copyright Owners argue that the way in which Apple has reported revenues to different parties is relevant both to how Apple will calculate revenues in the future and to Copyright Owners' arguments that the manner in which the Services calculate revenue is not transparent. *Id.* at 2-3. Copyright Owners assert that Service Provider Revenue is not a clear-cut concept and Apple concedes that what it reports as its own music streaming service revenue may differ from licensor to licensor. *Id.* at 3. Copyright Owners contend that Apple never raised the burden issue during the parties' meet-and-confers and the argument is not supported by witness testimony. *Id.*

C. Ruling

The information and documents the Copyright Owners request are relevant to Apple's rate proposal and the way in which it has reported revenues to the MLC and various licensors, which could indicate Apple's interpretations of revenue provisions in its agreements and how those interpretations might differ from its calculation in connection with the payable royalty pool under 37 CFR Part 385. While Apple's future calculations might change, the requested information could provide information about Apple's interpretations of relevant license and regulatory provisions at the time Apple made those calculations. While differences in terms (either across agreements or as dictated by regulation) could explain variances in revenue calculations, the presence of such differences (and the reasons for them), if any, goes to the comparability of agreements or regulatory requirements and does not render the information Copyright Owners seek irrelevant. Therefore, the Judges **GRANT** Copyright Owners' Motion to Compel with respect to RFP 115 and Interrogatory 6. Apple shall produce responsive materials.

IX. Apple RFP 22

A. Apple's Opposition

According to Apple, in RFP 22 Copyright Owners seek revenue data regarding Apple's App Store, a non-music business line that is separate and distinct from Apple's interactive streaming service, Apple Music. Apple Opposition at 7. Apple contends that Copyright Owners believe such information should be discoverable because Apple proposes that services should be able to deduct fees paid to distribution partners from their revenue calculations for purposes of determining mechanical royalties. *Id.* Apple believes this argument should fail. Apple states that it makes no arguments in its WDS about its app store nor does Apple contend that Apple Music drives app store revenue. From Apple's perspective, this lack of connection between Apple's app store revenue and its WDS is fatal to Copyright Owners' motion under 37 CFR § 351.5(b)(1). *Id.* at 8. Apple also contends that its proposal that services should be able to deduct distributor commissions or billing fees from their revenue calculation for purposes of paying mechanical royalties for interactive streaming does not open the door to discovery into Apple's app store income because Apple Music and the App Store are separate business lines and there is no evidence that Apple Music drives App Store revenue. *Id.* Apple states that it did not discuss this revenue deduction category in its WDS, although a fact witness made a "passing reference to the deduction in her written testimony" in the context of supporting a deduction for certain costs that are "unavoidable in providing interactive streaming services to the public." *Id.*, citing Apple WDS, Vol. 2, Segal Testimony ¶ 111. Apple asserts that this does not render the information that Copyright Owners seek discoverable.

Apple also does not believe that its inclusion of this revenue deduction category in its rate proposal puts distributor billing fees squarely at issue as Copyright Owners claim. *Id.* Apple contends that in the "rare instances" where the Judges have cited an aspect of a rate proposal as a basis for granting discovery, they have required a tight nexus between the discovery and the rate terms. *Id.* Apple argues that Copyright Owners cannot use a proposed term regarding a deduction to revenue for Apple Music as a springboard for obtaining discovery regarding Apple's revenue from a different service. *Id.* at 9. Apple finds disingenuous Copyright Owners' claim that Apple, Amazon, and Google are the only entities with the information regarding distributor commissions because they operate online distribution platforms. *Id.* [redacted] Apple also notes that other services have agreed to provide similar information so Copyright Owners can evaluate the impact of the proposed deductions. *Id.* Therefore, in Apple's opinion, Copyright Owners do not need information about app store commissions from Apple to evaluate the impact of the proposed revenue deductions. *Id.*

B. Copyright Owners' Reply

According to Copyright Owners, Apple RFP 22 seeks the revenues (*i.e.*, commission fees) that Apple received from digital service providers from the distribution of their Section 115-eligible music services through Apple's App Store. CO Reply at 3. According to Copyright Owners, Apple's proposed deduction of carriage or in-app commission fees in calculating Service Provider Revenue is sufficient to bring this request within the scope of permissible

discovery. *Id.* at 4. According to Copyright Owners, Apple acknowledges that Copyright Owners should be able to evaluate the impact of the proposed deductions but refuses to provide the information Copyright Owners have requested so that they may do so. *Id.* Copyright Owners contend that Apple made the requested revenue relevant to this proceeding when it included a term in its rate proposal permitting the deduction of such revenue from the payable service provider revenue pool.

Copyright Owners contend that they have requested only Apple's App Store revenues from the distribution of statutory music services and not all of Apple's App Store revenues and commissions, as Apple implies. *Id.* Copyright Owners dispute that their receipt of the amount of in-app commission fees that each Service in this proceeding has paid is sufficient to evaluate the impact of the proposed deductions because Apple fails to acknowledge that such information would be incomplete because it would not include the "thousands of other DSPs who, under Apple's [rate proposal], would be able to take this revenue deduction, and who have paid such commissions to Apple." *Id.* Copyright Owners aver that Apple's argument that there is no evidence that Apple Music drives App Store revenue is irrelevant because RFP 22 seeks information concerning the plain terms of Apple's rate proposal, not about actual or potential revenue synergies between Apple Music and its app store. *Id.*

C. Ruling

Apple RFP 22 (like Amazon RFP 46 discussed above) seeks documents sufficient to show all revenues that Apple receives from DSPs in connection with the distribution of their services through Apple's app store or through any device, broken down at every level of specificity at which it is maintained by Apple. Copyright Owners contend that they only seek Apple's App Store revenues from the distribution of statutory music services and not all of Apple's App Store revenues and commissions, but RFP 22 is far broader than Copyright Owners claim. It extends to any service that a DSP provides through the app store or through any device. Copyright Owners admit that the information they seek could cover revenue from thousands of DSPs and the number of devices involved could be several times that. Given Copyright Owners' inability to determine what DSP related expenses Apple might or might not attempt to deduct from music streaming revenue, and consistent with the analysis of and ruling on Amazon RFP 46, the Judges **GRANT** Copyright Owners' Motion to compel production under Apple RFP 22.

X. Apple RFPs 143 & 144 (promotional and other discounted offerings)

A. Apple's Opposition

According to Apple, Copyright Owners ask it to produce all documents that it purportedly was required to retain concerning promotional offerings under the *Phonorecords II* rates and the vacated *Phonorecords III* decision. Apple Opposition at 10. [redacted] Therefore, from Apple's perspective, it had no obligation to retain any information required by statute until then, which renders these requests moot. *Id.* Apple also contends that documents concerning promotional offerings are not directly related to Apple's WDS. *Id.* According to Apple, Copyright Owners do not cite any briefing or testimony from Apple discussing promotional offerings, although Apple mentions

such offerings in a footnote to its expert's testimony explaining that the Judges have traditionally allowed a zero-royalty rate without a minimum for promotional offerings, among other uses. *Id.* Apple does not believe this reference supports Copyright Owners' motion for extensive documents and information concerning promotional offerings. *Id.* Apple concedes that it has proposed a zero-royalty rate for promotional offerings but does not believe that proposal entitles Copyright Owners to broad access to documents concerning those offerings. *Id.* at 10-11. Apple contends that Copyright Owners have not even tried to explain why the data they seek about promotional offerings is relevant or discoverable and there is no nexus between this information and the issues before the Judges. *Id.* at 11.

Apple asserts that, despite Copyright Owners' suggestion to the contrary, the requested documents do not relate to Apple's proposed zero royalty rates for trial periods because such offerings are outside the definition of promotional offering in Apple's rate proposal, which means the digital transmission of a segment of a sound recording that does not exceed 90 seconds for free for the primary purpose of promoting the sale or other paid use of that sound recording or promoting the artist. *Id.* According to Apple, Copyright Owners cannot rely on any proposals or discussions regarding free trials to support their motion with respect to these requests. *Id.*

Apple contends that it never met and conferred with Copyright Owners regarding RFP 143 and Copyright Owners did not raise their dispute with respect to this RFP before the close of discovery. *Id.* Apple believes that Copyright Owners' motion regarding RFP 143 should be denied for this additional reason pursuant to 37 CFR § 351.5(b)(1) (motion to compel must include a statement saying that parties had conferred and were unable to resolve the matter). *Id.* at 12.

B. Copyright Owners' Reply

Copyright Owners contend that they are entitled to the historical information they request to assess the impact of promotional free trial and discounted offerings. CO Reply, Tab B at 5. Copyright Owners argue that Apple's statement that it only has responsive information from January 2021 onwards does not bear on the discoverability of the information sought. *Id.* Copyright Owners contend that it is immaterial that Apple's expert only makes passing mention of promotional offerings because Apple's rate proposal proposes a zero or reduced rate for promotional, free trial, and discounted offerings and Copyright Owners' requests seek the historical data that will show the impact of those proposed trials, promotions, and discounts on mechanical royalties. *Id.* Copyright Owners note that Apple witnesses Segal and Prowse discuss promotional, free trial, and discounted offerings. *Id.* at n.5. Copyright Owners also note that Apple contends that Copyright Owners' requests relate only to promotional offerings rather than to a broader category of information that includes zero-royalty rates for trial periods. *Id.* at 5. Copyright Owners accuse Apple of ignoring that the relevant section of the Motion addresses Apple RFPs 143 and 144. *Id.*

Copyright Owners dispute Apple's argument that the Judges should deny RFP 143 because the parties did not discuss it in meet and confers. Copyright Owners note that RFP 143 is nearly identical to RFP 144, which the parties did discuss on several occasions and which

Apple refused to respond to. Copyright Owners contend that it strains credulity to believe that Apple's response to RFP 143 would have been different than its response to RFP 144 had the parties explicitly discussed it when they discussed RFP 144. *Id.* at n.6.

C. Ruling

Apple's rate proposal, which proposes zero or discounted rates for promotional offerings, makes relevant Apple's past promotional and other discounted offerings. The breadth and success of those offerings could yield relevant information about how Apple may use these offerings in the future.

Apple's contention [redacted] may limit the amount of responsive information that Apple has, but it does not moot the request with respect to the documents it does have. This position should not be interpreted as support for Apple's interpretation of what it was required to retain and for what period.

Apple's argument that Copyright Owners' request to compel production under RFP 143 should be denied because the parties did not directly address it in their meet and confer process is unpersuasive, given that RFP 144, which the parties apparently did address, is closely related and the parties met and conferred, generally, on remaining discovery disputes.

Therefore, the Judges **GRANT** the motion and direct Apple to provide any responsive information and documents that it has not already produced with respect to RFPs 143 and 144, or to state affirmatively that it has already done so.

However, the Judges **DENY** the requests to the extent they seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

XI. Apple RFP 123

A. Apple's Opposition

Apple contends that RFP 123 is the type of broad, nonspecific discovery request, which is disconnected from Apple's WDS, that the CRB does not allow. Apple Opposition at 14, citing 37 CFR § 351.5 (CRB discovery regulation). Apple represents that it provided Copyright Owners with its monthly performance royalty payments for the use of musical works on Apple Music but contends that Copyright Owners do not explain why this is insufficient or how the requested information directly relates to Apple's WDS. *Id.* Apple notes that its WDS does not discuss its methodology for calculating performance royalties. Apple states that Copyright Owners argue that Apple's proposal to allow services to deduct performance royalties from the all-in royalty calculation entitles Copyright Owners to any document in any way underlying Apple's calculation of performance royalties, but Apple does not believe that discovery is so broad. *Id.* at 14-15. Apple contends that it is not clear what Copyright Owners expect the

services to produce. *Id.* at 15. Apple asserts that Copyright Owners know how much Apple pays in performance royalties each quarter and the monthly performance royalty deduction it would have taken in every month since January 2017 had it been paying under the statutory royalty. *Id.* From Apple's perspective, there is no basis for demanding documents or data underlying these performance royalty calculations other than to try to expose inaccurate past payments, which is not the purpose of this proceeding. *Id.*

B. Copyright Owners' Reply

Copyright Owners contend that RFP 123 seeks information concerning the way in which Apple calculates performance royalties. CO Reply at 6. Copyright Owners assert that where performance royalties are a component in the overall calculation of Apple's rate proposal, the amount of such royalties—and therefore the way this calculation is arrived at—has a direct impact on the quantum of mechanical royalties payable to copyright owners. *Id.* Copyright Owners contend that Apple's vagueness argument was first raised in Apple's Opposition. Copyright Owners assert that that is what the meet-and-confer process is intended to clarify. Had Apple raised this issue before, the parties could have addressed it, but Copyright Owners believe that Apple's feigned confusion is a pretense. *Id.* Copyright Owners contend that they seek the backup to support Apple's reported performance royalty payments that it proposes be subtracted from the all-in royalty to derive the mechanical royalty pool. *Id.* at 6-7. Copyright Owners believe they are entitled to see beyond the lump sums allocated by Apple as performance royalties into the actual manner in which those royalties were calculated. *Id.* at 7.

C. Ruling

Apple RFP 123 requests all documents underlying each distinct performance royalty total that Apple has reported to any musical works licensor in any period for any product or service that includes any of Apple's eligible digital music services, including all data, formulas and code referenced or used to calculate the revenue total. While Copyright Owners may have a legitimate interest in some of the documents that might be responsive to this request, as Apple notes, responsive documents could include items such as records of individual payments from each Apple Music subscriber or every database query Apple runs when calculating performance royalties under Apple's directly negotiated PRO deals. *See* Apple Opposition at 15. Copyright Owners have not adequately explained why such a potentially large number of documents is directly related to Apple's WDS. While the parties admittedly should have addressed issues of breadth and vagueness in the meet-and-confer, it is ultimately the responsibility of the proponent to avoid requests that are nonspecific and overbroad. Copyright Owners have not done so with respect to RFP 123. Finally, the Judges also find no reason to grant the requests to the extent they seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein. Therefore, the Judges **DENY** Copyright Owners' request.

XII. Google's General Opposition

Google states that only eight of the RFPs and four of the interrogatories in the Motion are directed at it, and Google believes it has already provided the requested discovery for many of them. Google Opposition at 1. Nevertheless, Google contends that Copyright Owners seek information that is not directly related or relevant to Google's direct case but instead seeks historical revenue and cost information to measure the magnitude and impact that Google's proposed rates and terms would allegedly have on already paid mechanical royalties. *Id.* at 2. As noted *supra*, Google contends that its rate proposal does not turn on the impact or magnitude of any particular rate prong or term but rather proposes that the Section 115 regulations be updated to [redacted] *Id.* Google also believes that Copyright Owners' use of discovery to audit Google's prior royalty calculations and payments is inappropriate. *Id.* at 3. Google contends that there is nothing stopping Copyright Owners' witnesses from analyzing different scenarios based on the actual payable royalty pool data that Google has provided and that Copyright Owners do not need and are not entitled to historical audit-like data for this purpose. *Id.* Google also believes that the Motion is untimely, contending that the Services agreed that motions to compel should have been filed by January 10, 2022. *Id.* at 3-4 n.2.[10]

XIII. Interrogatory 8

A. Google's Opposition

According to Google, Interrogatory 8 seeks an identification of all estimates used to determine any input to the calculation of the payable royalty pool under 37 CFR Part 385 for any of the Services' offerings and any actual figures that those estimates were later adjusted to. Google states that Copyright Owners believe they are entitled to know which royalty calculation inputs the Services estimated and the impact such adjustments had. *Id.* at 4, citing Motion at 6.

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[10] Copyright Owners dispute that their Motion is untimely, citing to their arguments in reply to Spotify's Opposition at 2-4. CO Reply at 8, n.7. Copyright Owners also believe that Google's timeliness argument is disingenuous considering that Google has not yet completed the production that it had already agreed to provide. *Id.* According to Copyright Owners, the January 10, 2022 date that Services cite as the deadline for filing MTC appears nowhere in the Judges' scheduling order or anywhere else. Copyright Owners contend that January 10, 2022, is the date that the parties agreed would be the earliest date to file MTC. CO Reply to Spotify's Opposition at 3. The Scheduling Order set December 23, 2021, as the close of the discovery period, but, according to Copyright Owners, that has nothing to do with discovery motions. *Id.* at 2. Copyright Owners contend that the Judges interpret Section 803(b)(6)(C)(iv) of the Copyright Act as authorizing the Judges to order discovery in connection with motions, orders and disputes that are pending after the close of the statutory discovery period. *Id.*, citing *Order Denying, Without Prejudice, SoundExchange's Motion to Compel the Services' Production of Certain Documents*, Docket No. 16-CRB-0001 SR/PSSR (2018-2022) (Sept. 13, 2016) (SDARS III Order) at 2-3. Copyright Owners note that the Services themselves filed motions to compel after December 23, 2021.

Section 803(b)(6)(C)(iv) of the Copyright Act states:

> Discovery in connection with written direct statements shall be permitted for a period of 60 days, except for discovery ordered by the [Judges] in connection with the resolution of motions, orders, and disputes pending at the end of such period. The [Judges] may order a discovery schedule in connection with written rebuttal statements.

17 U.S.C. § 803(b)(6)(C)(iv).

In the absence of a specific end date for MTC ordered by the Judges and in light of the above-quoted language from Section 803, the Judges **DENY** the various Services' requests to deny Copyright Owners' Motion as untimely.

Google disagrees, arguing that its rate proposal and WDS did not touch on any issues concerning the circumstances under which estimates might be appropriately applied or any rule governing the application of estimates. *Id.* Google contends that Copyright Owners concede that the information they seek would be the equivalent of an audit of Google's past royalty payments, which is inappropriate in this proceeding, which was commenced for the forward-looking determination of the governing rates and terms for the licensing of musical works. *Id.*, citing 17 U.S.C. § 115(c)(1)(E). Google further argues that it has already produced responsive information in the form of [redacted] that Copyright Owners seek and that they have direct access to each set of this data submitted by Google to the MLC. *Id.* at 5, n.3.

B. Copyright Owners' Reply

Copyright Owners contend that they are entitled to the estimates that Google has historically used (and proposed to continue to use) in calculating mechanical royalties and any subsequent adjustment to such estimates. Copyright Owners' Reply, Tab A at 4. Copyright Owners assert that the purpose of the request is not to vet Google's past payments but to assess future impact. *Id.*

C. Ruling

The information Copyright Owners seek in Interrogatory 8 is relevant to the inputs and estimates used in calculating the payable royalty pool under 37 C.F.R. § 385.21(b). Google does not dispute that its rate proposal would carry forward this aspect of the current rate structure so the way in which Google calculated the payable royalty pool would continue to be relevant. Therefore, the Judges **GRANT** Copyright Owners' Motion to Compel Google to produce information responsive to Interrogatory 8. However, the Judges **DENY** the requests to the extent they seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

XIV. RFP 109, 114, 116

A. Google's Opposition

According to Google, RFP 109 seeks documents showing the revenues Google has reported to the MLC or any sound recording or musical works licensor for any product or service that includes any of its eligible digital music services. Google Reply at 5. Google believes that the dispute over this RFP relates to the portion targeting revenue reporting to sound recording licensors. *Id.* Google contends that documents showing Google's revenue reporting to the MLC and musical works licensors are already in Copyright Owners' possession and control and Google has already produced [redacted] *Id.* at n.4. Google asserts that the Motion offers no basis on which revenues reported to sound recording

licensors could be viewed as directly related to Google's direct case and that nothing in Google's rate proposal turns on reported revenue to sound recording licensors. *Id.* at 5.

Google argues that Copyright Owners' claim that they need discovery into whether Google reported identical revenues to different licensors is conclusory, with no explanation of the relevance of such information to Google's direct case. *Id.* at 6. Google claims that the definitions of reportable revenue under sound recording license agreements may differ among services and among licenses and will cover different copyrighted works and underlying rights so it would be "unremarkable (and irrelevant to any issue in this proceeding)" if revenues reported to sound recording licensors were to vary. *Id.* Google asserts that Copyright Owners admit the actual reason they seek this information is because it is relevant to their ability to test and challenge how each service has calculated and reported and intends under their respective rate proposals to calculate and report revenues to musical works licensors. *Id.* From Google's perspective that reason amounts to an attempt to use the discovery process to audit Google's past royalty reporting. *Id.*

According to Google, RFPs 114 and 116 seek documents sufficient to show all of the consideration that Google includes in its determination of Total Content Costs (TCCs) for calculating mechanical royalties and all documents underlying each distinct TCC amount that Google reported to the MLC or any other musical works licensor. *Id.* at 9. Google contends that Copyright Owners do not even attempt in their Motion to argue that these requests are directly related to Google's WDS, but instead quote an inapposite *Phonorecords III* Order without explaining how or why it justifies their request. *Id.* According to Google, in *Phonorecords III*, the Judges did not grant Copyright Owners' request for documents concerning Spotify's TCCs and payments to record companies merely because Spotify's rate proposal included a TCC component for certain offerings, as Copyright Owners contend. *Id.* Rather, Spotify relied on expert testimony arguing that its high TCCs were negatively impacting its profitability and success. *Id.* at 9-10.

Google contends that in that proceeding (unlike in the current one), Spotify put the actual amount of its payments to record companies at issue. *Id.* at 10. Google concludes that the Judges agreed that the value of equity interest, if any, that Spotify granted to record companies was directly related to that issue because (in part) the compensation paid to record companies (including any equity interest) constitutes a large portion of the TCCs that Spotify's expert decried in his testimony. *Id.* Google asserts that there is no similar direct relation between its WDS and RFPs 114 and 116. According to Google, although its rate proposal includes a TCC prong, it has not submitted any testimony related to the actual amounts it pays to record companies or suggested any changes to the TCC formulations based on those amounts. Rather, Google's proposed rates and terms are [redacted] *Id.* Hence, Google contends that RFPs 114 and 116 should be denied because they are not directly related to Google's testimony.

B. Copyright Owner's Reply

Copyright Owners contend that RFP 109 seeks documents sufficient to show the revenue totals that Google reported for its Section 115-eligible music services to the MLC and to each

sound recording and musical work licensor during the relevant time period. CO Reply at 4. According to Copyright Owners, Google concedes that the revenue as reported to the MLC is relevant, but states that the Copyright Owners should obtain it from the MLC. Google does not explain why Copyright Owners should have to get information from a third party when Google can provide it. *Id.* Copyright Owners note Google's statement that it has produced payable royalty pool data for musical works licensors but, according to Copyright Owners, that is not the same as the actual amount of reported revenue. *Id.* Copyright Owners assert that the revenue reported to sound recording licensors should not differ from the revenue reported to musical works licensors or to the MLC and if it does, the difference is relevant to assessing the impact of Google's proposed revenue allocations, deductions, and estimates in the proceeding. *Id.* In response to Google's contention that revenue reported to sound recording licensors could differ because it may cover different rights and copyright works, Copyright Owners highlight that the revenues at issue are Google's revenues from its statutory music services, which, Copyright Owners state, have nothing to do with which copyrighted works are licensed or what particular rights are licensed. *Id.*

According to Copyright Owners, RFPs 114 and 116 seek documents sufficient to show all of the consideration that Google includes in its TCC calculations as reported to the MLC and to musical works licensors. *Id.* at 5. Copyright Owners contend the CRB has held that by advocating for a revenue prong that is based in part on a percentage of label payments, a service puts at issue all consideration that it has provided to labels. *Id.*, citing *Order Granting in Part and Denying in Part Copyright Owners' Motion to Compel Production of Documents Concerning Record Label Ownership Equity in Spotify*, Docket No. 16-CRB-0003-PR (2018-22) (Feb. 9, 2017) at 3 (Spotify Order). Copyright Owners dismiss Google's attempt to distinguish this order from the current instance, noting that the *Phonorecords III* Order makes clear that Spotify put those amounts at issue by proposing a TCC prong, as Google has here. *Id.*

C. Ruling

Google RFP 109 is identical to Apple RFP 115 and Amazon 244. Google RFP 109 requests documents that are relevant and directly related to Google's rate proposal and the way in which it is calculated. The Judges **DENY** the requests to the extent they seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

With respect to Google RFPs 114 and 116, Google admits that its rate proposal includes a TCC prong, but contends that since it has not submitted any testimony related to the actual amounts it pays to record companies or suggested any changes to the TCC formulations based on those amounts, it should not have to produce documents related to the consideration Google includes in its determination of TCC or the TCC total it has reported to the MLC or to musical works licensors. But Google's proposal to include a TCC prong in its rate proposal (even without testimony to support such a prong) makes the documents that Copyright Owners seek directly related to Google direct case. The *Phonorecords III* Spotify Order is not to the contrary. *See Spotify Order* at 3 ("The Judges agree with the Copyright Owners that 'by advocating for a revenue prong that is based in part on a percentage of record label payments, Spotify has put

squarely at issue in this case all consideration that it has provided to Labels.'"). The Judges **GRANT** the requests to compel production under Google RFPs 114 and 116.

XV. Interrogatory 5

A. Google's Opposition

According to Google, Interrogatory 5 is an exceptionally broad and burdensome request that seeks an identification and explanation of every data point, calculation process, and all queries and code used to calculate revenues for each Google offering for a five-year period. Google Opposition at 7. Google contends that it has already sufficiently answered this interrogatory by explaining that it [redacted] *Id.* Google asserts that none of the other information Copyright Owners seek is relevant to Google's or Copyright Owners' proposed rates and terms. *Id.* Google contends that Copyright Owners seek "granular accounting details" that they believe will "shed light" on Google's prior revenue calculations, but, from Google's perspective, that does not make the information Copyright Owners seek relevant to Google's or Copyright Owners' proposals in this proceeding, neither of which depend on data or queries and code from historical calculations. *Id.* at 7-8. Google accuses Copyright Owners of trying to audit Google under the guise of discovery. *Id.* at 8.

B. Copyright Owners' Reply

Copyright Owners state that they seek information as to how Google has actually calculated Service Provider Revenue "Step 1" in its rate proposal. CO Reply at 6. Copyright Owners argue that saying that Google [redacted] is tautological and says nothing about what it deducts or excludes from gross revenue, how it makes allocations, and what it estimates and adjusts. *Id.* Copyright Owners note that in Google's cited response to this interrogatory Google does not identify which methodologies agreed to by which music publishers in which licenses it is using to make its revenue calculations. *Id.*

C. Ruling

Copyright Owners contend that the information they seek in Interrogatory 5 could shed light on the real-world application of Google's rate proposal. *See* Motion at 9. Google does not *per se* dispute the relevancy of the information Copyright Owners seek but contests the level of detail of the request. Google also complains about the breadth of the request, but given the relevancy of the information to Google's rate proposal, Copyright Owners are entitled to know how Google calculates revenue for its offerings. Google contends that it calculates revenues consistent with [redacted] Copyright Owners are entitled to test the accuracy of Google's statement and what assumptions Google makes, if any, to reach that conclusion. Therefore, the Judges **GRANT** Copyright Owners' Motion to Compel Google to produce materials responsive to Interrogatory 5.

XVI. Interrogatory 6

A. Google's Opposition

According to Google, Interrogatory 6 seeks an identification and explanation of every instance in which Google reported different revenues in connection with any of it eligible digital music services to musical works licensors, on the one hand, and to the MLC, on the other. Google Opposition at 6. While Copyright Owners claim that this interrogatory seeks information about what Google intends under its rate proposal to calculate and report, Google believes that the plain language of the interrogatory seeks only information about differences in revenue that has already been reported. *Id.* Google contends that Copyright Owners admit that this interrogatory seeks information directed to the equivalent of an audit of Google's past royalty payments. *Id.* at 7. Google contends that this is insufficient to render the information sought relevant to Google's WDS or that of Copyright Owners and is not a proper purpose of discovery. *Id.* Google also asserts that Copyright Owners have access to documents containing the information sought by this interrogatory through their relationship with the music publishers they represent and with the MLC. Google believes the discovery process in this proceeding should be directed to information related to the parties' direct cases governing legal principles, and not for other purposes. *Id.*

B. Copyright Owners' Reply

Copyright Owners contend that how Google reports revenues is relevant to Google's rate proposal, which calculates mechanical royalties based on reported revenue, and is relevant to Copyright Owners' arguments in this proceeding that the manner in which Google and other services calculate and report revenue is opaque. CO Reply at 5. Copyright Owners believe that is sufficient to meet the broad discovery standard for interrogatories. Copyright Owners also discount Google's contention that Copyright Owners could get the requested information from the music publishers they represent in that Copyright Owners do not represent all music publishers and it would be burdensome to have to seek this information through third-party discovery from thousands of publishers. *Id.* at 5-6. Copyright Owners believe Google has the requested information and has not argued that it would burdensome to provide it. *Id.* at 6.

C. Ruling

The information Copyright Owners seek is relevant to Google's rate proposal. The fact that Copyright Owners may be able to get some of the requested information from another source is not relevant to the standard for discoverability nor is Google's view about Copyright Owners' purported ulterior motive in requesting the information for audit purposes. The Judges **GRANT** the Motion in respect to this Interrogatory 6 directed to Google.

XVII. Google RFP 10 and Interrogatory 13

A. Google's Opposition

According to Google, RFP 10 and Interrogatory 13 seek five years of historical financial data and information quantifying the dollar amounts of Google's proposed deductions from service provider revenue. Google Opposition at 8. Google disputes Copyright Owners' assertion that this information is necessary to assess the magnitude and impact of Google's proposed deductions and that each Service's rate proposal puts the impact of their deductions at issue. *Id.* Google contends that the amount and impact of Google's proposed deductions are not directly related to or relevant to Google's WDS. *Id.* Google states that it has not offered any testimony about the actual dollar amount of its proposed deductions or suggested that the propriety of those deductions is based on their amount or impact. Rather, Google contends that its proposed deductions are based on [redacted] *Id.* From Google's perspective, Copyright Owners already have the information they need to assess Google's proposals or to examine the magnitude and impact of its proposed deductions in the form of the agreements that those proposals are based on, which Google already produced, and by running an impact analysis using "hypothetical information." *Id.* at 9.

B. Copyright Owners' Reply

Copyright Owners note that RFP 10 seeks the amount of revenue that Google receives as app store fees, which Google proposes to deduct from Service Provider Revenue, whereas Interrogatory 13 seeks the amounts of the other deductions from Service Provider Revenue that Google proposes, including taxes, refunds, charge-backs, declined payments, carriage or in-app commission fees or any other fees payable to platform device or other distribution partners, and e-commerce and referral fees. CO Reply at 6. Copyright Owners contend that the fact that Google offered no testimony about the actual dollar amounts of such proposed deductions does not "untether" Copyright Owners' requests from Google's rate proposal. *Id.* at 7.

C. Ruling

The fact that Google proposes to deduct certain fees from Service Provider Revenue makes the method of quantifying those deductions sufficiently relevant for discovery purposes to the matters to be addressed in the proceeding. Google does not deny that its rate proposal would deduct the types of fees that Copyright Owners seek information about. The fact that Google offers no direct witness testimony about those fee amounts does not shield the method of quantification of those fees from being directly related to the issues addressed in the proceeding. Google's views about how Copyright Owners might be able to obtain the information they seek through other means are irrelevant to the standards for discoverability.

Therefore, the Judges **GRANT IN PART** Copyright Owners' requests to compel production under RFP 10 and Interrogatory 13. However, the Judges **DENY** the requests to the extent they seek information or documents regarding the impact or quantum of revenues or

deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

XVIII. Google RFPs 88, 137, and 138

A. Google's Opposition

According to Google, RFP 88 seeks all analysis concerning the impact of any discounted subscription offering or promotional offering on royalties payable for the use of musical works on Google's services, whereas RFPs 137 and 138 seek all documents concerning Google's promotional offerings that Google is required to retain pursuant to 37 CFR Part 385. Google Opposition at 10. Google states that it has not offered any testimony about the "impact" its proposed terms will have on mechanical royalties, the purported reason why Copyright Owners seek this information. *Id.* at 10-11. Instead, Google's rate proposal codifies the promotional discounts [redacted] *Id.* at 11. Google contends that the mere discussion of promotional offerings, even if "tangentially or indirectly" related to its WDS is not directly related to that WDS. *Id.* Google also asserts that Copyright Owners are not entitled to documents in discovery simply because they were retained pursuant to regulations. *Id.* Regarding RFP 88, Google contends it has already conducted a reasonable search and produced documents responsive to this request. *Id.*

B. Copyright Owners' Reply

According to Copyright Owners, these RFPs seek historical information needed to assess the impact of Google's proposal for reduced or zero mechanical royalties for promotional, free trial, and other discounted offerings, including its request to extend royalty-free trial offerings from one month to a period of unlimited length. CO Reply at 7. Copyright Owners believe that Google's argument that the absence of witness testimony makes this information undiscoverable is "nonsensical" and contrary to CRB case law. *Id.* With respect to RFP 88, Copyright Owners contend that Google had originally refused to search for and produce responsive documents. Copyright Owners do not know whether Google has changed its mind and searched for and produced all relevant documents responsive to RFP 88 or whether some documents Google produced in response to other RFPs happen to be responsive. Copyright Owners contend that the Motion should be granted with respect to RFP 88 and if Google has already searched for and produced all responsive documents it can state so when it completes the production. *Id.* at 7 n.6.

C. Ruling

The Judges **DENY** the requests to compel production under RFPs 88, 137 and 138, seeking information or documents regarding the impact or quantum of discounted or promotional offerings, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

XIX. RFP 117

A. Google's Opposition

According to Google, RFP 117 seeks all documents underlying each distinct performance royalty total that Google has reported to any musical work licensor in any period for any product or service that includes any of Google's eligible music digital services. Google Opposition at 11-12. Google believes that Copyright Owners want backup data underlying Google's reported performance royalty deductions, but, from Google's perspective, those data are not directly related to Google's direct case and Copyright Owners do not even attempt to argue that it is. *Id.* at 12. Google contends that it has already produced documents showing the applicable public performance royalties subtracted from an all-in royalty calculation, and, to the extent Copyright Owners seek additional data, Google believes they have failed to meet their burden of establishing that it is directly related to Google's proposed rates and terms. *Id.*

B. Copyright Owners' Reply

Copyright Owners acknowledge that RFP 117 requests the backup to support Google's reported performance payments that it proposes be subtracted from the all-in royalty to derive the payable mechanical royalty pool. CO Reply at 7. Copyright Owners assert that Google's rate proposal affords services significant discretion in calculating payable royalties, including with respect to how they allocate performance royalties to what they deem to be covered activities. *Id.* Copyright Owners believe they are entitled to see beyond the lump sum amounts allocated by Google as performance royalties into the actual manner in which those royalties were calculated. *Id.* at 7-8.

C. Ruling

Google RFP 117 seeks all documents underlying each distinct performance royalty total that Google has reported to any musical work licensor in any period for any product or service that includes any of Google's Eligible Digital Music Services, including all data, formulas, and code referenced or used to calculate the revenue total. As with the identical Apple RFP 123, Google RFP 117 is vague and overbroad and Copyright Owners have not adequately explained why the requested documents are directly related to the issues addressed in this proceeding or why the potential breadth of the documents requested are justified in the context of this proceeding. Moreover, the Judges note that the request seeks information or documents regarding the quantum of performance royalties paid, which is not discoverable, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

Therefore, the Judges **DENY** the Copyright Owners' request to compel production under Google RFP 117.

XX. Pandora's General Responses

As a preliminary matter, Pandora repeats many of the same arguments as the other Services (*i.e.*, the Motion is untimely, meritless, not directly related to its WDS, a backdoor effort to audit past payments[11]). Pandora Opposition at 2-3.

A. Timeliness

Pandora states that Copyright Owners and the Services agreed that they would not challenge motions to compel filed on or before January 10, 2022, as untimely, but the Services notified Copyright Owners that they viewed any ripe motions to compel by the Copyright Owners after that date as untimely. *Id.* at 3, n.1. Pandora acknowledges that the Judges, in *SDARS III*, anticipated that motions to compel could properly be filed after the close of the discovery period. *See Order Denying, Without Prejudice, SoundExchange's Motion to Compel the Services' Production of Certain Documents*, Docket No. 16-CRB-0001 SR/PSSR (2018-2022) (Sept. 13, 2016) at 3. Pandora contends that that situation is distinguishable from the current proceeding because Pandora had informed the Copyright Owners of its refusal to produce the requested information weeks earlier in its written objections and responses, which were served in accordance with the agreed-upon discovery schedule for this proceeding and that Pandora's position with respect to those requests did not waver during the meet-and-confer process. Pandora Opposition at 4. Pandora contends that the dispute that gave rise to Copyright Owners' Motion was ripe weeks before the close of discovery. *Id.* at 5.

B. Copyright Owners' Reply

Copyright Owners contend that Pandora's timeliness argument is baseless, for the reasons discussed in its response to Spotify. Copyright Owners note that Pandora omits operative language from Section 803(b)(6)(C)(iv) of the Copyright Act, which authorizes discovery ordered by the Judges in connection with the resolution of motions, orders, and disputes pending at the end of the discovery period. CO Reply to Pandora's Opposition, Tab E at 2. Copyright Owners contend that the language that Pandora omitted from its discussion was held in *SDARS III* to entitle participants to move after the close of discovery with respect to disputes pending as of the close of discovery. *Id.* Copyright Owners represent that during the meet-and-confer process the parties resolved disputes as to other requests that would have been part of the Motion, which are tied to one of the requests at issue in the Motion. *Id.* at 2-3. Copyright Owners argue that Pandora's statement that allowing Copyright Owners to file motions to compel after the scheduling order's December 23, 2021 date flies in the face of CRB discovery practice is not only contrary to the statute but to the Services' own actions in filing motions to compel after December 23, 2021.

[11] In response to Pandora's and other Services' allegations that Copyright Owners are using the discovery process to effect backdoor audits of the Services' past payments, Copyright Owners note that the Protective Order precludes anyone but the lawyers and experts--who have no right to audit the Services--from seeing restricted information. CO Reply to Pandora's Opposition, Tab E at 1 n.2.

C. Ruling

The Judges **DENY** Pandora's request as they find the Motion to be timely for the reasons discussed in n. 10 above.

XXI. Pandora RFP 5 and Interrogatory 8

A. Pandora's Opposition

According to Pandora, RFP 5 and Interrogatory 8 broadly concern Pandora's use of estimates in its royalty reporting, which is governed by Section 115 regulations promulgated by the Copyright Office. Pandora Opposition at 5, citing 37 C.F.R. § 210.27(d)(2), which, according to Pandora, allows for the use of estimates and requires finalization of estimates in subsequent reports of adjustment. *Id.* From Pandora's perspective, RFP 5 and Interrogatory 8 would require it to produce information identifying every instance, over a 60-month period, where a component of Pandora's payable royalty pool under 17 U.S.C. § 115 contained an estimate, how the estimate was determined, calculated and applied, and a written account of the date and amount of any subsequent adjustment to the estimate. *Id.* at 5-6. Pandora believes these requests are burdensome and harassing. *Id.* at 6.

Pandora contends that Copyright Owners have not met their burden of showing how identifying estimates used in past payments is directly related to Pandora's WDS. *Id.* Pandora asserts that it has not proposed the use or elimination of any estimates in its rate proposal and therefore has not put estimates in issue or made them a part of its case. Therefore, Pandora believes that the Motion as to RFP 5 should be denied on that basis alone. *Id.* Pandora contends that the applicability of the Copyright Office regulations that govern the use of estimates in Section 115 royalty reporting "does not fall under the purview of the [CRB] or its rate-setting authority" and the requirement that services revise their estimates means any estimate used in royalty reporting is temporary and does not impact a service's final royalty obligation. *Id.* at n.3.

According to Pandora, Copyright Owners' attempt to justify RFP 5 as necessary to calculate the impact of the Services' proposed allocation and attribution of revenue to the Service Provider Revenue pool, says nothing regarding the use of estimates and adds nothing to Copyright Owners' argument. *Id.* at 6-7. Pandora also dismisses Copyright Owners' justification for Interrogatory 8 (*i.e.*, they want a complete picture of the royalties paid and the impact of the Services' proposed estimates). In Pandora's view, this purported justification fails to recognize that Pandora's rate proposal does not propose any estimates. *Id.* at 7. Pandora contends that these requests are broad and nonspecific and therefore unacceptable under 37 C.F.R. § 351.5(b). *Id.* Pandora estimates that compliance with the requests would take a Pandora employee a week. *Id.* at 7 n.4. Pandora believes that Copyright Owners already have all the information they need on this topic since Pandora informed Copyright Owners that it has used estimates to determine its relevant performance royalties when calculating the payable royalty pool under 37 C.F.R. Part 385. *Id.* at 7-8. In addition, according to Pandora, since January 2021, 37 C.F.R. § 210.27(d)(2) requires that a report of usage containing an estimate permitted by paragraph (d)(2)(i) identify each input that has been estimated, the reason for the estimate, and an explanation of the basis for the estimate. *Id.* at 8. Pandora contends that

Copyright Owners have not justified why they would need additional information and how they would use it to challenge Pandora's WDS. *Id.*

B. Copyright Owners' Reply

As a threshold matter, Copyright Owners assert that their requests are designed to illuminate the real-world impact of Pandora's rate proposal. CO Reply at 3. Copyright Owners dispute Pandora's argument that documents are only directly related to a topic that a participant has put in issue or made a part of its case in its written testimony. *Id.* From Copyright Owners' perspective, a participant's WDS is comprised of written testimony, the participant's introductory memorandum, its rate proposal, and exhibits. *Id.*, citing Discovery Order 3, *Order Granting SoundExchange's Motion to Compel Discovery of NAB Financial Documents*, Docket No. 14-CRB-0001-WR (2016-20) (Jan. 15, 2015) at 3. Copyright Owners also note that the discovery standard governing interrogatories authorizes discovery of nonprivileged information regarding any matter that is relevant to the claim or defense of any party. CO Reply at 3-4, citing 37 C.F.R. § 351.5(b)(2).

With respect to RFP 5, Copyright Owners contend that it addresses the items set forth in RFP 3(b)-(m) and incorporated into RFP 4, such as revenue categories and exclusions and deductions contained in Pandora's rate proposal. Copyright Owners note that Pandora does not dispute that RFPs 3 and 4 are directly related to its rate proposal and agreed to provide documents for those RFPs. *Id.* Copyright Owners state that for RFP 5, which seeks documents showing how Pandora performed allocations and estimates for the same items set forth in RFP 3, Pandora refused production, claiming that it has not proposed the use or elimination of any estimates and therefore has not put estimates in issue. *Id.*

With respect to Interrogatory 8, Copyright Owners state that it seeks the identification of "all types of estimates", which Pandora has provided and the quantification of subsequent adjustments thereto, which Pandora has not provided. Copyright Owners contend that RFP 5 and Interrogatory 8 are designed to show how Pandora's rate proposal will play out in the real world. According to Copyright Owners, [redacted] which are deductible within the all-in rate that Pandora proposes. *Id.* Copyright Owners assert that the estimate of performance income directly impacts mechanical royalties in Pandora's rate proposal. *Id.* According to Copyright Owners, these estimates flow directly into Pandora's and Spotify's shared rate proposal, which proposes to eliminate late fees when performance income estimates are later adjusted. *Id.* at 4-5, citing WDS of David Kaefer ¶¶ 85-86. From Copyright Owners' perspective, Pandora and Spotify want there to be no penalty for making flawed estimates that deprive Copyright Owners of income. Copyright Owners believe that the discovery they seek would demonstrate the real-world economic impact of such estimates. *Id.* at 5.

C. Ruling

As Copyright Owners note, RFP 5 is a follow-up request to RFPs 3 and 4, which request documents sufficient to show the types and amounts of various revenues and costs under the terms and definitions of Pandora's rate proposal. RFP 5 seeks, for each amount identified in

connection with RFP 4, if the amount was determined through an allocation or estimate, documents sufficient to show how the allocation or estimate was determined, calculated, and applied. Pandora does not dispute the discoverability of documents requested under RFPs 3 and 4. RFP 5 merely seeks an explanation of any items in RFP 4 that relied on allocations or estimates (*i.e.*, how the allocation or estimate was determined, calculated, and applied). The request seeks documents that could shed light on the way in which Pandora calculates costs and revenues consistent with the terms and definitions of its rate proposal and is therefore directly related to that proposal. As Copyright Owners note, a participant's WDS is not limited to the written testimony of any particular witness or witnesses and can comprise written testimony, the participant's introductory memorandum, its rate proposal, and exhibits. *See* Discovery Order 3, *Order Granting SoundExchange's Motion to Compel Discovery of NAB Financial Documents*, Docket No. 14-CRB-0001-WR (2016-20) (Jan. 15, 2015) at 3. Therefore, the Judges **GRANT** Copyright Owners' request to compel all documents responsive to RFP 5 relating to the *way* in which Pandora calculates these costs and revenues. However, the Judges DENY this request to the extent it seeks information or documents regarding *the impact or quantum* of these costs or revenues, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

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Interrogatory 8 asks Pandora to identify all estimates that it used in determining any input to any calculation of the payable royalty pool under 37 C.F.R. Part 385 for any of its offerings and whether any estimate was subsequently adjusted to an actual figure and the adjusted amount. As Copyright Owners note, this interrogatory seeks the estimates that the Services have previously used in calculating mechanical royalties, which the Services propose continuing in their rate proposals. Motion at 6. The requested information is relevant to the way in which Pandora (as is the case with respect to Google, discussed above) is likely to calculate the mechanical royalties it will owe under its current rate proposal. Therefore, the Judges **GRANT** Copyright Owners' request to compel an answer to Interrogatory 8.

XXII. Pandora RFPs 113-116 and Interrogatory 6

A. Pandora's Opposition

According to Pandora, these requests seek documents underlying the revenue totals (RFP 113), TCCs (RFP 114), performance royalty payment amounts (RFP 115), and subscriber counts (RFP 116) reported to the MLC, all musical works licensors, and all sound recording licensors, including data, formula, and code used to make the relevant calculation, whereas Interrogatory 6 asks Pandora to identify those situations where service revenue reported to any licensor was different from what was reported under 17 U.S.C. § 115. Pandora Opposition at 8-9. Pandora represents that it has [redacted], far more, from Pandora's perspective, than Copyright Owners might need for understanding, evaluating, and probing Pandora's WDS. *Id.* Yet, Copyright Owners fail to demonstrate, according to Pandora, how the documents they seek are directly related to Pandora's WDS or why anything more is required. *Id.* at 8-9. Pandora also asserts that the requests are "inscrutably vague" and "incredibly burdensome." *Id.* at 9.

With respect to RFP 113 and Interrogatory 6, Pandora asserts that to the extent that Copyright Owners wish to understand Pandora's payments under the current rate structure and revenue definition they already have everything they need. To this effect, Pandora details a list of information and documents it has already provided (*e.g.*, [redacted]). *Id.* at 9-10. Pandora contends that how it calculated revenues [redacted] is not relevant, much less directly related, to its proposed definition for the statutory license at issue here or to Copyright Owners' ability to identify what will be paid under this definition. *Id.* at 10-11. Pandora contends that although Copyright Owners seek documents and information [redacted], they fail to note that Pandora has already produced that information. *Id.* at 11. Pandora also contends that Copyright Owners have failed to justify the burden on Pandora of producing the requested information, which Pandora estimates would require about 120 hours of work. *Id.* at 11-12.

Pandora makes much the same argument with respect to RFP 114, contending that it already provided information detailing [redacted] and alleging that Copyright Owners do not explain why they need any more detailed information on Pandora's label payments, other than the fact that Pandora has a TCC prong in its rate proposal. *Id.* at 12. Pandora distinguishes the current request from the *Phonorecords III* Spotify Order. According to Pandora, the referenced order was much more narrow than Copyright Owners represent and does not support their position. In Pandora's view, in the *Phonorecords III* Spotify Order, the Judges did not order discovery providing every intimate detail of Spotify's payments to record companies for their content, although the Judges did grant Copyright Owners' request to compel documents identifying the value of that consideration. *Id.* at 12-13. Pandora believes that the way in which it calculated its label payments or whether or not they were calculated properly each month may be the appropriate subject of a record-company audit and perhaps an adjustment to Pandora's Section 115 payments if an error was revealed, but it is irrelevant to testing Pandora's rate proposal, which, according to Pandora, does not govern or turn on the methodology or accuracy of Pandora's TCC calculation. *Id.* at 13-14.

Pandora reiterates the same arguments with respect to RFPs 115 and 116. *Id.* at 14-15.

Pandora also believes that RFPs 113-116 should be rejected as vague and burdensome. *Id.* at 15. Pandora claims that it is "exceedingly unclear" what Pandora would have to do to comply with Copyright Owners' requests if they are granted, a point that Pandora states that it raised in its meet-and-confer with Copyright Owners, to which, Copyright Owners purportedly responded that it is not their responsibility to tell Pandora what information is stored in their systems. *Id.* at 15-16. Pandora also contends that the burden of complying with these requests far outweighs the limited value of the requested information. *Id.* at 16. Pandora accuses Copyright Owner of conducting a fishing expedition. *Id.*

B. Copyright Owners' Reply

Copyright Owners note that Pandora contends that it has produced a great many documents about the topics addressed by RFPs 113-116 but refuses to provide a complete response to these RFPs specifically. CO Reply at 5. Copyright Owners contend that providing a great number of related documents is not a discovery standard, although it undermines Pandora's claims that the RFPs are improper. *Id.* Copyright Owners contend that the documents sought have a direct impact on the mechanical royalties payable under Pandora's rate proposal, which is based on greater-of prongs measured by revenue, TCC, and subscriber totals subject to a deduction of performance royalty payments. *Id.* From Copyright Owners' perspective, documents underlying [redacted] are relevant. *Id.* at 6. Copyright Owners argue that the input information it seeks is necessary to assess the true impact of Pandora's rate proposal. According to Copyright Owners, if the inputs reveal a different output, it will identify the impact of Pandora's proposed deductions, exclusions, and allocations, and may reveal the imprecision or degree of discretion in the calculation of mechanical royalties under Pandora's rate proposal.[12]

With respect to Interrogatory 6, Copyright Owners contend that Pandora's own service revenue should not vary from licensor to licensor and if it does, the degree and reason for the variance should be identified and explained so the applicable definitions and terms can be examined and compared to those in Pandora's rate proposal. *Id.* at 6-7.

Copyright Owners reject Pandora's argument that its requests are vague, arguing that if they were Pandora would not have been able to determine the purported burden of complying with the requests with such precision. *Id.* at 7. Copyright Owners note that the supposedly vague term in Copyright Owners' requests—underlying—also appears in Pandora's own document requests. *Id.* Copyright Owners dispute that their requests are burdensome, arguing that even if Pandora's estimates on hours required to comply were accurate, the time would not be unduly burdensome in a case where mechanical royalties will be set for five years. *Id.* at 7-8.

C. Ruling

The Judges **GRANT** Copyright Owners' requests for the information they seek in RFPs 113-116 that could show whether or not Pandora calculates the inputs into the rate proposal consistently over time and in different circumstances. Pandora contends that it has already provided ample documents for Copyright Owners to make the calculations that Pandora believes Copyright Owners need to make, but it does not contend that it has provided all responsive documents. Pandora argues that the requests are vague and that it discussed this issue with Copyright Owners at the meet and confer. On the record evidence, however, Pandora does not adequately explain where the vagueness lies in the requests. Rather, Pandora's counsel asked Copyright Owners' counsel what specific types of documents Copyright Owners were seeking and Copyright Owners' counsel declined to provide the requested guidance and noted that it is

[12] Copyright Owners take exception with Pandora's interpretation of the *Phonorecords III* Spotify Order. According to Copyright Owners, the limitation the Judges placed on what Spotify was required to produce was whether its label payments were linked to the compensation that Spotify paid to record companies for their content, not whether the documents sought were overly detailed. CO Reply at 6 n.5.

not Copyright Owners' place to tell Pandora what sort of responsive information it maintains or should produce. Pandora Opposition, Ex. A. Larson Decl. ¶ 10. Pandora did not identify any particular aspect of any request that it found too vague to understand and, in fact, understood the requests well enough to provide some documents that it believed to be responsive. The requested information does not appear overly burdensome.

The Judges **DENY** these requests to the extent they solely seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein. However, if the documents responsive to these requests that are made discoverable by this Order to show the consistency, *vel non*, of Pandora's calculation of inputs over different times and circumstances also show the impact or quantum of these inputs, these documents are nonetheless discoverable.

The Judges also **GRANT** Copyright Owners' request to compel production under Interrogatory 6. The information Copyright Owners seek is relevant to Pandora's rate proposal and the consistency in which it has calculated the underlying inputs, including the amount of discretion Pandora exercises in making the necessary calculations in different circumstances. Therefore, Pandora is required to produce all responsive documents and information with respect to RFPs 113-116 and Interrogatory 6 or to state affirmatively that it has already done so.

The Judges DENY these requests to the extent they solely seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein. However, if the documents responsive to these requests that are made discoverable by this Order to show the consistency, *vel non*, of Pandora's calculation of inputs over different times and circumstances also show the impact or quantum of these inputs, these documents are nonetheless discoverable.

XXIII. Spotify's General Response

Spotify asserts that the Motion should be denied because (1) Copyright Owners disregarded the statutory deadline for filing a motion to compel; (2) Spotify has already produced the documents and information that Copyright Owners seek; and (3) the requested discovery is irrelevant and burdensome. Spotify Opposition at 1. Spotify contends that Copyright Owners seek documents and information to understand, test, and challenge Spotify's rate proposal, but Spotify contends that it has produced all the relevant inputs Copyright Owners need for a complete and accurate picture of that proposal. *Id.* at 2. Spotify asserts that Copyright Owners seek an audit of every aspect of Spotify's revenue reporting under the existing regulations. *Id.* Spotify contends that, in their requests Copyright Owners imply that, should they uncover through discovery that a service employed some problematic method of calculating revenue under the existing regulations, that might call into question the propriety of the entire percentage-of-revenue scheme. *Id.* at 2-3. Spotify asserts that Section 115 addresses such concerns by allowing Copyright Owners, via the MLC, to audit digital music providers. *Id.* at 3. Spotify argues that it has proposed to largely carry forward the current rate structure, which, from

Spotify's perspective, does not entitle Copyright Owners to "onerous and audit-like" discovery into Spotify's compliance with the existing regulations. *Id.*

A. Timeliness

Spotify argues that Copyright Owners' Motion should be denied as untimely. *Id.* at 3-4. The arguments for and against are discussed in n.10 above. For the reasons stated there, the Judges do **NOT DENY** the Motion as untimely.

B. Documents and Information Regarding Payable Royalty Pool

Spotify disputes Copyright Owners' contention that it refused to produce the information and documents Copyright Owners seek regarding the payable royalty pool under Spotify's rate proposal. *Id.* at 5. Spotify cites Copyright Owners' Motion at 5-6, at which Copyright Owners reference Spotify RFP 3 and Interrogatories 1 and 8. *See, e.g.*, Motion at 6, apparently referring to RFP 3 and Interrogatory 1 ("Amazon and Spotify have refused to produce the information sought by these requests."). Yet, an appendix to the Motion does not list Interrogatory 1 as being in dispute with respect to Spotify. *See* Motion, Appendix A at A-3. While Spotify makes references to information it provided in response to Interrogatory 1 in its Opposition at 5 n.3, it does not state that it provided all the information that was requested. It does not appear that Copyright Owners' Reply addresses Interrogatory 1. Therefore, it is unclear whether there is still a live dispute with respect to Interrogatory 1 for Spotify.

Spotify details the information it produced in response to Copyright Owners' requests. *Id.* at 5-6. With respect to RFP 3(a), Spotify contends that it provided "exactly what Copyright Owners requested and the material it produced provides a 'complete and accurate picture' of the payable royalty pool under Spotify's proposal." Spotify offered to answer any questions Copyright Owners might have. *Id.* at 6. For these reasons, Spotify argues that the Motion should be denied as moot with respect to RFP 3(a). *Id.* at 6. Spotify contends that if Copyright Owners have specific questions about the calculations and inputs provided in the produced document, they may depose and/or cross-examine Spotify's designated financial witnesses as needed. *Id.* at 6 n.6.

In an apparent reference to Interrogatory 8, Spotify also notes that Copyright Owners demand that Spotify identify all estimates it used from 2017 to present to calculate its mechanical royalties and whether the estimates were subsequently adjusted and by how much. *Id.* Spotify details the information it provided in response to Interrogatory 8 (*i.e.*, [redacted]. Spotify contends that Copyright Owners seek more detailed information, which would include every potential estimate it used since 2017 and whether and how Spotify subsequently adjusted the estimate. *Id.* at 7. In Spotify's view, [redacted] *Id.* Spotify contends that Copyright Owners have failed to articulate how the historical estimates and adjustments requested in Interrogatory 8 are directly related to Spotify's WDS or relevant to any claim or defense by any party in the proceeding. *Id.* Spotify asserts that [redacted]

[redacted], a process that occurs under 37 C.F.R. § 210.27, which the Copyright Office adopted and is "not directly at issue in this proceeding." *Id.*

From Spotify's perspective, the production of historical estimates and adjustments to Spotify's mechanical royalties from 2017 to present will not elucidate Spotify's current rate proposal and has nothing to do with it. *Id.* Spotify suggests that if Copyright Owners want to assess the royalties paid and the impact of Spotify's proposed estimates, they should look to [redacted] *Id.* at 7-8. Spotify also believes that compliance with Interrogatory 8 would be unduly burdensome because the [redacted] and would not provide any relevant information Copyright Owners do not already have. *Id.* at 8.

Spotify also questions Copyright Owners' charge that discovery is warranted with respect to the way in which Spotify calculates the mechanical royalty pool under 37 C.F.R. § 385.21 because Spotify's [redacted] *Id.* Spotify contends that its proposal largely carries forward a rate structure that participants have operated under for the better part of a decade and Spotify's proposal to continue such rate structure does not entitle Copyright Owners to audit the accuracy of Spotify's reporting under the existing regulations nor to seek expansive discovery into "every internal work paper, calculation, estimate, and adjustment ever considered or conducted by Spotify." *Id.* at 8-9.

With respect to particular requests—RFP 3(f), 3(g), 4, 173, and Interrogatories 5 and 6—Spotify details the information that it has already provided (*e.g.*, [redacted]), which, in Spotify's opinion, should moot Copyright Owners' Motion. *Id.* at 9. Yet, Copyright Owners seek information used to prepare [redacted] to test and challenge how Spotify has calculated and reported under the existing regulations. Spotify believes this information is irrelevant to "the task at hand." *Id.* Spotify cites RFP 173 (seeking documents underlying each distinct revenue total) and Interrogatory 5 (asking Spotify to identify and explain how it calculates revenues for each of its offerings) as asking the Judges to compel Spotify to create and produce a detailed blueprint of its internal reporting and accounting processes that explains how Spotify calculates each of its revenue inputs, describes the data gathered for those calculations, identifies what data repositories were used, what formulas, queries and codes were run, and the processes for estimating, adjusting, or allocating aspects of those calculations. *Id.* at 9-10. Spotify contends that these requests should be denied for two principal reasons: (1) Spotify produced everything Copyright Owners need to have a complete and accurate picture of Spotify's rate proposal and (2) section 115 already provides sufficient mechanisms for ensuring (or testing and challenging) the accuracy of a DSP's mechanical royalty payments, revenue calculations, or reporting under the applicable regulations. *Id.* at 10-11.

With respect to RFP 3(f) and (g)—revenue of Spotify's associates, affiliates, agents, or representatives recognized in lieu of Spotify recognizing it, as well as barter or nonmonetary consideration Spotify recognized as GAAP revenue—Spotify represents that [redacted] *Id.* at 11 and n.9.

With respect to RFP 3(b), (d), (e), (k), (l), 4, 5, 33, and 34, Spotify notes that Copyright Owners seek documents concerning revenue allocations based on Spotify's proposed clarification of the definition of Service Provider Revenue to confirm that the term only covers revenue that is directly derived from section 115 licensed activity and should exclude revenue derived from delivery of Non-Covered Works (*e.g.*, podcasts). *Id.* at 11-12, citing Motion at 9. Spotify does not dispute that it proposes these changes to the current regulations, but disputes Copyright Owners' representation that it has refused to produce documents related to these proposed allocations. *Id.* at 12. Spotify states that it has already produced documents sufficient to show [redacted] *Id.* Spotify contends that it produced [redacted] According to Spotify, Copyright Owners [redacted] *Id.* But, even if this were not the case, Spotify does not believe that Copyright Owners articulated why [redacted] is insufficient. *Id.*

As for documents showing its revenue not directly derived from section 115 licensed activity, [redacted] *Id.* at 12-13. Yet, from Spotify's perspective, Copyright Owners seek unfettered discovery into any non-royalty-bearing non-music revenue generated by Spotify. Spotify does not believe that such revenue is directly related to Spotify's WDS. *Id.* at 13.

With respect to RFP 3(d) and (e) and 34 (*i.e.*, revenue from advertisements and sponsorships placed between section 115 and non-section 115 works and those embedded or served within non-covered works, and analysis concerning Spotify's proposal that 50% of revenue from advertisements placed between section 115 and non-section 115 content be allocated to the revenue base), Spotify contends that the Motion should be denied as moot because [redacted] *Id.* at 13-14.

Regarding revenue deductions—RFP 3(m) and 4—Spotify contends that Copyright Owners never raised this sub-part of RFP 3 or RFP 4 during the meet and confer process and they do not explain how this discovery is proportionate to the needs of this proceeding. *Id.* at 14. With respect to the advertising-cost deduction, Spotify contends that it proposes to continue the status quo and [redacted]

[redacted] *Id.* Spotify notes that its future advertising costs are to be determined, but the deduction under Spotify's proposal cannot exceed 15% of Spotify's gross advertising revenues. *Id.* According to Spotify, the "reasonability [sic] of the proposed advertising deduction turns on that percentage, and not on the 'quantum of advertising-related costs.'" *Id.*, quoting Motion at 12. [redacted] and their request for additional, burdensome discovery underlying past-period reporting they have already accepted is another "audit-like" request that has no place in this proceeding and should be denied. *Id.* at 14-15.

Regarding RFPs 174-176 (TCC, performance royalties, and subscriber totals), Spotify represents that it produced [redacted] *Id.* Yet, Spotify contends that these RFPs seek sweeping discovery into all of Spotify's underlying materials and calculations. *Id.* Spotify argues that such discovery is not directly related to Spotify's WDS and puts an unreasonable burden on Spotify, requiring it to produce documents containing "all data, formulas and code" that Spotify has ever referenced or used in any way to calculate any revenue amount it reported to any musical works licensor. *Id.* at 16. Spotify asserts that Copyright Owners' desire to re-calculate the numbers Spotify has already produced is beyond the scope of relevant discovery in this proceeding and of Spotify's WDS and disproportionate to the needs of this case and is an attempt to conduct an unauthorized audit. *Id.*

C. Copyright Owners' Reply

Copyright Owners respond to Spotify's opposition regarding RFPs 3, 33, and 34 in one section of their reply (*See* CO Reply at 4-6), to RFPs 173-176 in another (*See* CO Reply at 6-7), and to Interrogatories 5, 6, and 8 in another (*See* CO Reply at 7-8).

With respect to RFP 3, Copyright Owners note that Spotify claims that [redacted] a claim that Copyright Owners call "facile and untrue." CO Reply at 4. Copyright Owners contend that Spotify's production is missing "the quantum of the various inputs to the calculation of Service Provider Revenue (RFP 3(b)-(g))." *Id.* Copyright Owners contend that the [redacted] *Id.* Copyright Owners also assert that [redacted] *Id.* According to Copyright Owners, Spotify admits that it [redacted] as sought by RFP 3(b) and (k) (as well as RFP 33). *Id.* Copyright Owners argue that [redacted] to these requests do not identify the information these RFPs seek. *Id.* Copyright Owners dismiss Spotify's suggestion that they look at the difference between its MLC reporting and its financial statements, arguing that "[t]his is discovery, not a guessing game." *Id.* at n.7.

Nevertheless, Copyright Owners state that Spotify's responses moot the Motion with respect to two subparts of RFP 3. *Id.* at 5. With respect to RFP 3(a) (identification of the royalty

pool) Spotify [redacted] Spotify also represents that as to RFP 3(d) [redacted] *Id.* Accordingly, Copyright Owners withdraw the Motion as to RFP 3(a) and (d). *Id.* Copyright Owners assert that it does not moot the Motion as to RFP 3(e) (or RFP 34). RFP 3(e) calls for revenue from placement of third-party advertising on or following Relevant Pages, which Copyright Owners state is a revenue category present in *Phonorecords II* and the *Phonorecords III* Final Determination that is unrelated to the issue of [redacted] *Id.*

Regarding RFP 34 (analysis concerning Spotify's revenue from sponsorships and commissions as set forth in the definition of Service Provider Revenue), according to Copyright Owners, the request is not limited to [redacted] *Id.*

Regarding RFP 3(f)-(g) and (m) (revenue recognized by others, value of nonmonetary consideration, proposed deductible advertising costs), according to Copyright Owners, Spotify [redacted] but Copyright Owners contend that this assertion cannot be correct because each is a revenue or deduction category present in the *Phonorecords II* and *Phonorecords III* Final Determination terms, requiring that it be tracked. *Id.* With respect to subpart (m), Copyright Owners state that [redacted] From Copyright Owners' perspective, [redacted] *Id.* at 5-6. As for RFP 3(c), Copyright Owners assert that Spotify's opposition fails to address this request and hence concedes that it must produce the information. *Id.* at 6.

According to Copyright Owners, RFPs 4 (*i.e.*, types and amounts of revenues or costs) and 5 (*i.e.*, information showing how allocations or estimates were determined, calculated, and applied) seek additional information regarding RFP 3 subcategories (b)-(m). *Id.* Copyright Owners state that Spotify does not contend that it has provided the requested information or offer any opposition beyond its RFP 3-related arguments. Thus, to the extent it must provide information for RFP 3, in Copyright Owners' view, Spotify also must provide information for RFPs 4 and 5. *Id.*

According to Copyright Owners, RFPs 173-176 request documents underlying Spotify's MLC and licensor reporting with respect to its revenues, TCCs, performance royalties and subscriber totals, respectively. *Id.* Copyright Owners contend that these RFPs, like RFPs 3-5, seek the information driving the royalty calculation under Spotify's rate proposal. *Id.* Copyright Owners dismiss Spotify's contention that the reported outputs of its calculations are sufficient and Copyright Owners are not entitled to the underlying records upon which they are based. *Id.* at 6-7. Copyright Owners contend that Spotify shows no undue burden and the documents sought are those Spotify relies on in the ordinary course in its reporting. *Id.* at 7.

Regarding Interrogatory 5 (explanation for how Spotify calculates revenues for its offerings), Copyright Owners assert that Spotify's response is "conclusory", (*i.e.*, [redacted]) and the revenues Spotify reports are those it recognized (without

describing its actual processes). *Id.* at 7. Copyright Owners accuse Spotify of parroting the conclusions rather than providing the information to look beyond those conclusions. *Id.*

With respect to Interrogatory 6 (identification and explanation of instances where Spotify reported revenues to its licensors different from those reported for 37 C.F.R. Part 385), Copyright Owners assert that Spotify [redacted] *Id.* Copyright Owners assert that this does not identify where those revenues differed from Spotify's other reported revenues nor provide any explanation for such differences, and its [redacted] *Id.* Copyright Owners contend that even if they were able to cross-check Spotify's MLC reporting against its label reporting, that would not show how or why such divergence occurred. *Id.*

With respect to Interrogatory 8, Copyright Owners assert that Spotify has not answered the portions of the request, for each estimate Spotify used in determining its royalty pool inputs, whether the estimate was subsequently adjusted to an actual figure and the adjusted amount. *Id.* at 7-8. According to Copyright Owners, [redacted], both of which are part of Spotify's rate proposal and, according to Copyright Owners, they receive lower royalties when licensees overestimate performance royalties in an all-in rate structure or underestimate TCC amounts in a rate structure with a TCC prong, both of which are features of Spotify's rate proposal. *Id.* at 8. Copyright Owners also note that [redacted] *Id.*, citing WDS of David Kaefer ¶¶ 85-86 ("[redacted] Adjustments made to account for these types of changes should not be subject to a late fee."). Copyright Owners contend that Spotify should be required to provide the categories it estimates and the magnitude of its subsequent adjustments. Copyright Owners are unpersuaded by Spotify's arguments that Copyright Owners' requests are unduly burdensome, simply because compliance would require data from multiple different databases and sources and coordination of several teams. *Id.* at n.13.

D. Ruling

The Judges **DENY as moot** Copyright Owners' request to compel Spotify to produce information responsive to Interrogatory 1.

Spotify does not dispute that RFP 3 is directly related to its rate proposal and has already provided documents in response. Copyright Owners acknowledge that there is no longer a live dispute with respect to RFP 3(a) and (d). Therefore, the Judges **DENY AS MOOT** Copyright Owners' requests with respect to RFP 3(a) and (d). With respect to the remaining subparagraphs of RFP 3, the Judges **GRANT** the Motion and direct Spotify to provide all responsive documents or to state affirmatively that it has done so or that it has no such documents.

With respect to RFPs 4 and 5, Spotify does not dispute that these RFPs relate to its proposed definition of Service Provider Revenue. It does not argue that it has provided all responsive documents, but rather argues that it has provided all that Copyright Owners need to accomplish what Spotify believes they are trying to accomplish. Because RFPs 4 and 5 seek

documents that are directly related to Spotify's rate proposal, the Judges **GRANT** the Copyright Owners' Motion to Compel all documents responsive to the subject RFPs.

RFP 33 (revenue that is and that is not directly derived from Spotify's offerings) and 34 (Spotify's revenue from sponsorships and commissions as set forth in the Service Provider Revenue definition in Spotify's rate proposal) are directly related to Spotify's rate proposal. Therefore, the Judges **GRANT** Copyright Owners' motion with respect to RFPs 33 and 34.

Regarding Spotify RFP 173 (documents underlying each distinct revenue total), and 174, 175, and 176 (documents and information about TCC, performance royalties, and subscriber totals), because the information requested directly relates to Spotify's WDS, including its rate proposal, the Judges **GRANT** those requests. Spotify shall provide all responsive documents and information or state affirmatively that it has already done so.

Interrogatories 5 and 6 are relevant to Spotify's rate proposal. Spotify's contentions that it already provided sufficient information for the task at hand are unpersuasive. Therefore, the Judges **GRANT** Copyright Owners' requests to compel Spotify to produce all information responsive to Interrogatories 5 and 6.

Interrogatory 8 is relevant to Spotify's rate proposal and its late fee proposal. Spotify's contention that the request is unduly burdensome because of turnover at Spotify and the way in which it must gather the requested information is unpersuasive. Therefore, the Judges **GRANT** Copyright Owner's request with respect to Interrogatory 8.

However, the Judges **DENY** the forgoing requests to the extent they solely seek information or documents regarding the impact or quantum of revenues or deductions arising from the proposals, for the reasons set forth in the first paragraph in Section I.C. above, which is incorporated by reference herein.

To the extent this Order requires production of documents, the producing party shall comply by delivering the responsive documents within ten days of the date of this Order or, alternatively, by providing an affirmative statement that no documents exist that are responsive to the discovery requests or the requirements of this Order.

Within ten days of the date of this Order, the affected parties shall file an agreed, redacted version of this Order for public viewing.

SO ORDERED.

Digitally signed by Suzanne Barnett
Date: 2022.04.26 15:48:35 -04'00'

Suzanne M. Barnett
Chief Copyright Royalty Judge

Dated: April 26, 2022.

Proof of Delivery

I hereby certify that on Tuesday, May 10, 2022, I provided a true and correct copy of the Joint Submission Regarding Redaction of April 26, 2022 Order on Copyright Owners' Motion to Compel Production of Documents and Information from Services Concerning Their Rate Proposals to the following:

Zisk, Brian, represented by Brian Zisk, served via E-Service at brianzisk@gmail.com

Johnson, George, represented by George D Johnson, served via E-Service at george@georgejohnson.com

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

Joint Record Company Participants, represented by Susan Chertkof, served via E-Service at susan.chertkof@riaa.com

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Signed: /s/ Joshua D Branson